



November 21, 2002

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767

OR2002-6675

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172867.

The Travis County Sheriff's Office (the "sheriff") received a request for copies of police records pertaining to a deceased individual. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted representative sample documents.²

You claim that portions of the information at issue consist of medical records that are subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. We note that the MPA provides that "a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter." Occupations Code § 159.002(b). This office has concluded that the protection afforded by section 159.002

¹ As the sheriff did not submit to this office written comments stating the reasons why section 552.108 would allow the requested information, or portions thereof, to be withheld from disclosure, we find that the sheriff has waived this exception to disclosure. *See* Gov't Code §§ 552.301, .302. Accordingly, we do not address whether any portion of the requested information is excepted from disclosure under section 552.108 of the Government Code.

² We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). After carefully reviewing your arguments and the information at issue, we find that no portion of the information constitutes medical records of the deceased or information obtained from such records. Accordingly, we conclude that the sheriff may not withhold any portion of the information at issue under the MPA.

You also claim that portions of the information at issue consists of mental health records that are subject to chapter 611 of the Health and Safety Code. We note that chapter 611 provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002. Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See* Health and Safety Code § 611.001. Sections 611.004 and 611.0045 provide for access to mental health records only for certain individuals. *See* Open Records Decision No. 565 (1990). After carefully reviewing your arguments and the information at issue, we find that no portion of the information constitutes mental health records of the deceased or information obtained from such records. Accordingly, we conclude that the sheriff may not withhold any portion of the information at issue pursuant to chapter 611 of the Health and Safety Code.

We note that social security numbers that are contained within the information at issue may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law.³ The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The sheriff has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that social security numbers that are contained within the information at issue are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the sheriff, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

³ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov’t Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

Prior to releasing social security numbers, the sheriff should ensure that they were not obtained or are not maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990. We note, however, that the right of privacy is purely personal and lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). Accordingly, the sheriff may not withhold the deceased's social security number under section 552.101 of the Government Code in conjunction with federal law.

You also claim that portions of the information at issue are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. We note that information is protected from disclosure under the common-law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* This office has long held that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure pursuant to the common-law right to privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 at 5 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, as we have noted, the common-law right of privacy is purely personal and lapses at death. *See Moore*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.). Accordingly, we conclude that the sheriff may not withhold any portion of the medical information regarding the deceased under section 552.101 in conjunction with the common-law right to privacy. Furthermore, we find that no portion of the submitted information pertaining to any other individual is protected from disclosure under the common-law right to privacy. Accordingly, we also conclude that the sheriff may not withhold any information pertaining to other individuals noted in the submitted information pursuant to section 552.101 in conjunction with the common-law right to privacy.

You also argue that social security numbers that are contained within the information at issue are protected from disclosure under the common-law right to privacy. However, this office has previously determined that the common-law right to privacy does not protect such information from disclosure. *See* Open Records Decision Nos. 226 (1979) (noting social security numbers not protected under privacy), 169 (1977). Accordingly, we also conclude that the sheriff may not withhold any social security numbers contained within the information under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Finally, you claim that the information at issue contains some information that is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that

the sheriff must withhold the driver's license numbers that we have marked within the information at issue pursuant to section 552.130, but only if those numbers constitute Texas driver's license numbers. We note again, however, that the deceased's driver's license number may not be so withheld under section 552.130 of the Government Code since the right to privacy is purely personal and lapses at death. *See Moore*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.).

In summary, some social security numbers of living individuals that are contained within the information at issue may be confidential under federal law. The sheriff must withhold the driver's license numbers that we have marked within the information at issue pursuant to section 552.130 of the Government Code, but only if those numbers constitute Texas driver's license numbers. The sheriff must release the remaining submitted information to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

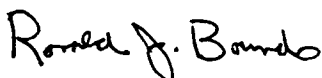
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 172867

Enc. Submitted documents

cc: Ms. Sharon Sprague
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(w/o enclosures)